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A TRUE
ACCOUNT
OF

What past at the *Old-Bailey*,

May the 18th, 1711.

Relating to the

TRIAL

OF

Richard Thornbill, Esq;

Indicted for the Murder of

Sir Cholmley Deering, Bart.

The Second Edition Corrected.

L O N D O N :

Printed for *John Morphew*, near *Stationers-*
Hall. 1711. Price Two-pence.

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A True

ACCOUNT OF THE TRYAL

OF

Richard Thornhill, Esq;

Indicted for the Murther of Sir Cholmley
Deering, Baronet, at the Old-Bailey,
on Friday May the 18th, 1711.

ABOUT Nine in the Morning came on
the Tryal of *Richard Thornhill, Esq;*
for the Murther of Sir *Cholmley Deering*,
Baronet; a Jury of *Middlesex* be-
ing Sworn, several Witnesſes were produc'd to

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prove

prove the Matters charg'd against him in the Indictment. The first Evidences were such as related to the Quarrel begun at the Toy at Hampton-Court, April 27th past, who depos'd, that at a Meeting of about Eighteen Gentlemen there, at that Time, a Difference happen'd between the Deceas'd and the Prisoner, that upon their struggling and contending with each other, the Wainscoat of the Room broke in, and Mr. Thornhill falling down, had some Teeth struck out by Sir Cholmley Deering's stamping upon him; that upon this, the Company immediately interpos'd to prevent further Mischief, and Sir Cholmley being made sensible of his Fault, declar'd himself ready to ask Mr. Thornhill's Pardon, which Mr. Thornhill said he did not think sufficient for the Injury done him in beating out his Teeth; and upon his requiring further Satisfaction, Sir Cholmley reply'd, He did not know where to find him, which Mr. Thornhill shid was a Lie; soon after this the Company broke up, and 'twas observ'd that those Two Gentlemen went Home in different Coaches, and with some Retentment.

It appear'd that after this Sir Cholmley made Overtures of Accommodation.

The Evidence for the Queen (Brother-in-Law to the Deceas'd) being shown by the Queen's Council the Paper of the Challenge directed to Sir Cholmley, was ask'd how he came by it? Whether he received it before or after Sir Cholmley's Death? And from whom? The Gentleman reply'd, that

that by reason of the great Concernment he was under at that Time he could give no particular Account of that Paper, but that he received it among several others, which were thrown into his Hat (in the Room where Sir Cholmley Died) and which he supposed were taken out of his Pocket, but could not say whether before, or after his Death; and that his First Discovery of it was upon pulling out his Handkerchief, as he was walking in the Garden, immediately after Sir Cholmley's Decease, and taking it from the Ground he found it to be as follows, viz.

S I R,

May the 8th, 1711:

I Shall be able to go Abroad to Morrow Morning, and desire you would give me a Meeting with your Sword and Pistols, which I insist on; the Worthby Gentleman my Friend, who brings this, will concert with you for the Time and Place. I think Turtle-fields will do well, Hyde-Park will not, this Time of the Year being full of Company.

I am

Your Humble Servant,

Richard Thornhill;

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Dr. Smalridge

Dr. *Smalbridge* being upon the Bench, and Sworn, gave Evidence, that he was sent for by Special Messengers to a Gentleman, who they told him was Shot, and in his going to him heard who he was, when he came into the Room Sir *Cholmley* desir'd to Receive the Sacrament, telling the Doctor he was extreamly sorry for the Misfortune that had happen'd; whereupon the Doctor told him, *He could not administer the Sacrament to him unless he was sorry for the Crime also;* upon which Sir *Cholmley* answer'd, *What would you have me do? I was Challeng'd;* the Doctor reply'd, *That was not sufficient to justify the Action, but that he must own the Fault, and forgive the Person.* Hereupon the Queen's Council ask'd the Doctor whether Sir *Cholmley* named the Person who sent the Challenge? The Doctor said, *he did not, but seem'd heartily to Repent of that, and his other Sins, and freely forgave the Person that did him the Injury.*

Several Witnesses were produced to prove what happen'd on the 9th Instant before, at, and after Sir *Cholmley's* Death, as, That he came about Six a Clock that Morning to the Coffee-house at *Kensington*, and enquired of the Maid whether Mr. *Thornhill* lodg'd there? She said, Mr. *Thornhill* had lodg'd there, but did not now; Sir *Cholmley* having found out his Lodgings, after asking whether Mr. *Thornhill* was within, and being told he was, but not stirring, Sir *Cholmley* immediately went up Stairs, and Mr. *Thornhill's* Servant depos'd, That Sir *Cholmley* came

came into his Master's Dining Room with a Brace of Pistols in his Hands; upon which he inform'd his Master Sir *Cholmley* was there; who thereupon came to him, and ask'd Sir *Cholmley* if he would drink a Dish of Tea, which he refus'd, but drank some Small-beer. Mr. *Thornhill* having dress'd himself, they went together in a Hackney-Coach to *Tuile-Fields*; upon their being there, the Evidence depos'd, That they came up like Two Lions, and with their Pistols advanc'd, when within Four Yards of each other discharg'd so equally together it could not well be discover'd who Shot first; but the Flash in the Pan of Sir *Cholmley's* Pistol seem'd to be first: Sir *Cholmley* falling, Mr. *Thornhill* went and embrac'd him, lifting up his Hands and Eyes with great Concernment; he immediately went off, but was soon stop't by a Person that came up to him, who told him that he had kill'd a Man, and therefore he must apprehend him, and would carry him before Mr. Justice *Cross*, who was a Gentleman, and would use him as such; whereupon Mr. *Thornhill* said, he would go with him where he pleas'd; for he was only going to seek for Help for his Friend; but desir'd them without delay to send for a Surgeon, that in order to it, he offer'd One a Guinea, and gave another half a Guinea, which was return'd: He express'd Then a great Sorrow, and that he had rather have lost his Right Arm. In this Time a Woman that was there, seeing Sir *Cholmley* upon the Ground in that Condition, rear'd up his Head, she finding him Faint and Speechless, gave him something Cordial to Drink, asking him if he had a Wife or Children? He told her he had not a Wife, but

but had Two Children : She enquiring how he came by this Misfortune ? He answer'd, a *Challenge*. A Surgeon being come, he presently offer'd to let him Blood ; but Sir *Cholmley* told him he had lost enough ; he there dress'd his Wounds, and Sir *Cholmley* was in a little Time put into a Chair, and carried to a Gardener's that was near at Hand : After he was brought into the House the Surgeon took Six or Seven Ounces of Blood from him, dress'd his Wounds again, and they gave him Cordials, &c.

It was testified, that upon asking Sir *Cholmley* whether he came by this Injury through unfair Usage ? He replied, no, *Poor Thornhill, I am Sorry for him ! This Misfortune was my own Fault, and of my own Seeking ; I heartily forgive him, and desire you all to take Notice of it, that it may be some Service to him, and that one Misfortune may not occasion another.*

Mr. *Thornhill* in his Defence produced several Witnesses, one whereof was Sir *Thomas Robinson*, who gave an Account that he was present at the Toy at *Hampton-Court* when the Quarrel happened, (as before related,) and that soon after he heard Sir *Cholmley* would have made up the Difference, but meeting Sir *Cholmley* at the Play-House, he ask'd Sir *Thomas* whether he had lately heard any Thing from Mr. *Thornhill*, for that he had sent to him, but could never receive any Answer, and therefore thought he still resented the Matter ; Sir *Thomas* replied, *You know that best ;* whereupon Sir *Cholmley* said, *If he requir'd further Satisfac-*

on

on he was ready to give it, and the sooner the better.

The Queen's Council ask'd Sir Thomas, as to his Acquaintance with Mr. Thornhill, and if he knew his Hand? He said, they had been acquainted for above Twenty Years, had been Schoolfellows at Westminster, and ever since kept a constant Correspondence, and that he had received several Letters from him; upon this the Council gave him the Paper of the Challenge (before recited,) asking him if he knew that to be Mr. Thornhill's Hand? He lookt upon it, and said, he believ'd it was not, for that Mr. Thornhill us'd to write his Name in smaller Letters; and further added, that he did not know Mr. Thornhill's Hand so well as to swear positively whether that Writing was, or was not his, but in his Opinion it was not.

Mr. Thornhill's Servant was called particularly to prove Sir Cholmley's coming to, and going out with, his Master as before said. The Queen's Council ask'd him, Whether he could read and write? He answer'd, Yes. Then he was ask'd, How long he had liv'd with his Master? He said, About Three Years. Whether he had ever seen his Master write? He said, No. If he knew of any Difference between Sir Cholmley and his Master? He said, He did not. And if he knew his Master's Hand? Thereupon giving him the Paper of the Challenge, asked him, If that was his Master's Hand? He said, He believ'd it was.

Hereupon

Hereupon one of the Judges ordered the Paper of the Challenge to be shewed Mr. *Thornhill's* Servant again; telling him, If he had happily spoke the Truth he must not recede from it, for that he was upon his Oath; and thereupon asked him, If he believed that to be his Master's Hand? To which he answer'd again; *That he believed it was.*

Upon which Mr. *Thornhill* observ'd to the Court, That this Servant of his, who pretended to know his Hand, was only an Attendant upon his Groom; and it was very strange that he should know it better, than Sir *Thomas Robinson*, who had been so long an Acquaintance; and therefore hoped that his Servant's Evidence would not have an equal Weight with Sir *Thomas Robinson's*.

The * Surgeons that appeared in Mr. *Thornhill's* Behalf deposed, That the Hurt which he received from Sir *Chalmley* at the Toy was very dangerous, that it had put him into a Fever; and if he had not been of a strong Constitution it might have occasioned his Death. These, and Two Women that attended him in his Illness, testified, That for several Days he received no Nourishment but by Liquids, and that the Operations that were necessary to be made were purposely deferr'd for his better Defence at his Tryal.

Several

* Mr. *Bussiere* and Mr. *Kensy*.

Several Persons of Quality and Worth declared as to Mr. Thornhill's Character, That they never knew him to be of a Quarrellsome Disposition; but that on the contrary, Sir Cholmley Deering was given to be unwarrantably Contentious.

Mr. Thornhill, through the whole Course of the Tryal, made his Observations upon the respective Evidences as he saw Occasion, and took Notice, that he believed, that Sir Cholmley hastened their Fighting, because as he was told Sir Cholmley was to be Married in a few Days.

The Lord Chief Justice Trevor coming into Court after the Tryal was begun, the Evidence was summ'd up, and the Charge given to the Jury by Mr. Baron Price, who in summing up the Charge, among other Matters, was pleased to take Notice of the Evidence that was produc'd, relating to Sir Cholmleys Forgiveness, which he said was a Spiritual Concern, and extended only to Conscience; notwithstanding which the Law remain'd in its full Force.

And having also insisted upon other Particulars of the foregoing Tryal, he acquainted the Jury how the Law stood with respect to Manslaughter and Murder, viz.

That

That where there was no previous Quarrel, and a Person should happen to be Kill'd in Heat of Blood upon a sudden Difference that might arise, in this Case, the Law did so far indulge the Passions of Men, as to allow such an Action to be only Man slaughter.

But if there was a premeditated Malice, and some Time intervened after the Quarrel happened, the Law supposing the Passions of Men might cool, did in such a Case, adjudge it to be Wilful Murder.

The other Judges, viz. The Lord Chief Justice Trevor and Judge Parson, concurr'd in this Opinion relating to the Law.

After which the Jury withdrew, and said out a considerable Time.

Before they brought in their Verdict, the Foreman came into Court to enquire if there were only Two or Four Pistols mentioned in the Tryal, whereupon, a foregoing Evidence was recall'd, who deposed, that there were Four Pistols found in the Field.

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Soon after this the Jury brought in their
VERDICT, that

Richard Thornhill, *Esq;* was guilty of
Man-slaughter *only*.

Upon which great Acclamation was made, And
Mr. *Thornhill* desir'd that the Verdict might be
recorded.

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[15]

Soon after this the Jury brought in their

VERDICT, that

Richard Thornhill, Esq. was guilty of

Man-Slaughter only.

Upon which great Acclamation was made, And
Mr. Townshend desired that the Verdict might be
recorded.

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